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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1110

GRAND LODGE HALL ASSOCIATION, I. O. O. F. OF INDIANA, A CORPORATION, ET AL.,

Appellants,

vs.

RALPH F. MOORE, AS AUDITOR OF MARION COUNTY, INDIANA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

STATEMENT AS TO JURISDICTION ON APPEAL

MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represent:

I

Statutory Provision Sustaining Jurisdiction Pursuant to Supreme Court Rule 12

The Act of February 13, 1925, C. 229, § 1, 43 Stat. 937, being Judicial Code Section 237, as amended (U. S. C. A. Tit. 28, Section 344), provides in part as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a

treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The Act of January 31, 1928, C. 14, Sections 1 and 2, as amended April 26, 1928, 45 Stat. 54, 466 (U. S. C. A. Tit. 28, Sections 861a, 861b), provides as follows:

"The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by Appeal.

"The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which section 861a of this title substitutes for a writ of error."

U. S. C. A. Title 28, 861a, 861b.

II

State Statute Validity of Which Is Involved

This appeal involves the validity of Section 3 of Chapter 146 of the Acts of the General Assembly of Indiana for the year 1937, Indiana Acts 1937, Ch. 146, pp. 814, 815, 816, which purported to deprive appellants of a tax exemption granted by the law under which they were incorporated. The title and Section 3 of the Act of 1937 read as follows:

"Chapter 146

(H. 308. Approved March 9, 1937)

"An Act to amend sections 1, 5 and 9 and the title of an act entitled 'An act concerning the organization

of foundation or holding companies and prescribing their powers and duties,' approved March 10, 1921."

• • • • • • •

"Sec. 3. That section 9 of the above entitled act be amended to read as follows: Sec. 9. Such corporation may hold and convey any real estate necessary for the transaction of its business or the execution of any trust. Any and all real and tangible personal property held by any such corporation and which is both occupied and used by such corporation exclusively for the purposes and objects of such corporation, shall be exempt from taxation. And any and all intangible personal property and the proceeds and income thereof, held by any such corporation exclusively for the purposes and objects of such corporation, also shall be exempt from taxation: Provided, however, that all real and tangible personal property now held by such corporations, or hereafter acquired by them in foreclosure of present mortgage obligations or in settlement or payment of present obligations, for the purposes and objects of such corporations, but not occupied and used exclusively for such purposes and objects, shall continue to be exempt from taxation, if owned by such corporation until March 1, 1944, but from and after March 1, 1944, shall be subject to taxation: Provided further, however, That all real and tangible personal property acquired by any such corporation after the effective date of this act and not specifically exempt hereunder shall be subject to taxation."

Indiana Acts 1937, p. 815.

The specific effect of the above amendment is to deprive appellants of a previously existing tax exemption on income earning real estate by limiting the exemption to real estate "both occupied and used" for exempt purposes.

III

Date of Decree and Date of Application for Appeal

The decree sought to be reviewed was entered by the Supreme Court of Indiana on the 11th day of December, 1946 (R. p. 255).

(Not yet officially reported. Unofficially reported as *Grand Lodge Hall Ass'n, I. O. O. F. et al.* v. *Moore, County Auditor, et al.* (1945), 71 N. E. 2d 19.)

The application for appeal was presented on the 11th day of February, 1947 (R. 271).

IV

Manner in Which the Federal Question Involved Was Raised and Decided

This action was begun by complaint (R. pp. 4-58) wherein appellants alleged that certain real estate owned by each of them was exempt from taxation by virtue of a contract created by the Act of the Indiana Legislature under which they were incorporated and particularly section 9 thereof (Indiana Acts, 1921, Ch. 246, p. 130, Sec. 9, set out in full in appendix, p. 21) (R. p. 34, ll. 16-25) and that the above cited amending act of 1937, which purported to deprive them of that exemption was "unconstitutional and in violation of section 10 of Article I of the United States as impairing the obligation of a contract" (R. p. 35, ll. 9-14). This challenge to the validity of the Act of 1937 was repeated by motion for new trial (R. p. 230, l. 19 to p. 31, l. 4; p. 234, ll. 11-24; p. 238, l. 16 to p. 239, l. 2), by exceptions to the trial court's conclusions of law (R. p. 226, ll. 17-22; ll. p. 227, ll. 8-13), and amended conclusions of law (R. p. 246, l. 25 to p. 248, l. 21) and by appropriate assignment of error in the Supreme Court of Indiana, directed

to the conclusions of law and the ruling on motion for new trial (R. p. 1, l. 22, to p. 2 l. 6).

The Federal question thus raised was the sole question decided adversely to appellants by the Supreme Court of Indiana, which, although holding that the claimed tax exemption had *originally been* granted by the Act of 1921, concluded:

> "Looking at the holding company act of 1921 as a whole, in the light of the opinions of the United States Supreme Court above quoted, and particularly the decision in *Christ Church v. Philadelphia County*, we are unable to find in it the intent to promise these corporations more than a present tax exemption, a privilege that might in the wisdom of a future General Assembly be and was taken away by the Act of 1937."

V

The Nature of the Case

This is an appeal from a final decree of the Supreme Court of Indiana (the highest court of that state) affirming a decree of the Marion Circuit Court denying to Appellants an injunction against the taxation of certain real estate owned by them and likewise denying a declaratory judgment that the Act of the General Assembly of Indiana under which taxes were imposed (Indiana Acts 1937, Ch. 146, Sec. 3, p. 815) was in violation of Article I, section 10, clause 1 of the Constitution of the United States (Complt. R. pp. 3-37, prayer, p. 36, l. 26 to p. 37, l. 3).

Appellants are corporations organized for religious, educational or charitable purposes under Chapter 246 of the Acts of the General Assembly of the State of Indiana for the year 1921; Indiana Acts 1921, p. 730 (R. p. 205, ll. 19-26, Appendix p. 19). That Act, set out in full in the appendix hereto (p. 19) authorized any nine or more persons to incorporate for the promotion of religious, edu-

cational and charitable purposes *only*, authorized the acquisition by gift, devise, bequest or otherwise, of money or property and use of the principal or income for authorized corporate purposes, prohibited any pecuniary benefit to any member of the corporation except compensation for services actually rendered, and granted tax exemption in the following language:

> "Sec. 9. Such corporation may hold and convey any real estate necessary for the transaction of its business or the execution of any trust. Property held by such corporation exclusively for religious, educational or charitable purpose shall be exempt from taxation."

Subsequent to 1921 and prior to 1937 Appellants were each incorporated for religious, educational or charitable purposes under this Act (R. p. 206, l. 15 to p. 208, l. 24) each acquired valuable real estate (R. p. 208, l. 25 to 209, l. 3; p. 216 ll. 7-11; p. 220, l. 23), the net income from this real estate (after application to expenses and incumbrances) is and had been applied to authorized corporate purposes (R. p. 218, l. 22 to p. 219, l. 27, 212 l. 12 to p. 213, l. 16, 214 l. 10 to p. 215, l. 7; p. 244, l. 22 to p. 245, l. 6), and such real estate was not taxed after its acquisition by Appellants until after the enactment of section 3 of Ch. 146 of the acts of the Indiana General Assembly for the year 1937 (R. p. 209, ll. 22-25; p. 218, ll. 8-21; p. 221, ll. 14-17).

(The above facts, appearing in slightly different phraseology, are stated in the opening paragraph of the opinion of the Supreme Court of Indiana.)

The title and section 3 of such Act of 1937, purporting to amend section 9 of the Act of 1921 is set out above under II.

The Supreme Court of Indiana has squarely decided the Federal question thus presented, affirming the validity of the Act of 1937 on the ground that the Act of 1921 and

appellants' action thereunder did not create a contract protected by Article I, section 10 of the Constitution. In so doing, it held that appellants' real estate *had been* properly exempt under the Act of 1921, thus deciding in appellants' favor the only *non-Federal* issue deemed worthy of discussion (R. Appendix p. 19).

The decision of the Supreme Court of Indiana is challenged in this Court by three assignments of error, as follows:

1. The Supreme Court of the State of Indiana erred in denying the claim of each appellant that the exemption from taxation granted to each of them by Section 9 of Chapter 246 of the Acts of the Indiana General Assembly for the year 1921 was protected from subsequent repeal by the Constitution of the United States, Article 1, Section 10, cl. 1.

2. The Supreme Court of the State of Indiana erred in deciding that Chapter 246 of the Acts of the General Assembly of Indiana for the year 1921 and particularly Section 9 thereof, did not constitute a contract between the State of Indiana and each of the appellants who had incorporated and acted thereon, exempting from taxation the property of each appellant described in their complaint herein, and that such exemption was not protected from repeal by Article 1, Section 10, clause 1 of the Constitution of the United States.

3. The Supreme Court of the State of Indiana erred in deciding that Chapter 146 of the Acts of the General Assembly for the year 1937 which purported to repeal the tax exemption granted to appellants and each of them by the original act of their incorporation (Chapter 246, Acts of the General Assembly of Indiana for 1921), did not impair the obligation of the contract with appellants and each of them found in Chapter 246 of the Acts of the Indiana General Assembly for the year 1921, in violation of Article 1, Section 10, Clause 1 of the Constitution of the United States.

VI

Statement of Ground upon Which It Is Believed the Federal Questions Involved Are Substantial

It is believed that the federal question presented is a substantial one, and that the decision of the Supreme Court of Indiana is erroneous, for the following reasons:

1. The decisions of this Court relied upon by the Supreme Court of Indiana in deciding that appellants incorporation and action taken in reliance upon the Act of 1921 did not constitute a contract are not controlling:

(a) *Rector of Christ Church* v. *Philadelphia County* (1861), 24 How. (65 U. S.) 300, "particularly" relied upon, is not in point. The tax exemption grant there involved was made to an existing charitable corporation which incurred no detriment, made no change of position and conferred no new benefit in reliance upon or as consideration for the grant. There was plainly no contract, because there was no consideration. Here appellants and the donors of their funds have dedicated valuable property to religious, educational and charitable use upon faith of the exemption contained in their incorporating statute.

(b) The circumstances, from which this court inferred, in *Wisconsin & Michigan R. Co.* v. *Powers* (1903), 191 U. S. 379, 48 L. Ed. 229, that the legislature of Michigan did not offer a *promise* of tax exemption as an inducement to build railroads, are not present here. One of these circumstances was that private profit was the motive for the railroad building. Here, absence of private profit to the appellants and their incorporators is a condition of the grant of the privileges (including tax exemption) offered in the Indiana Act of 1921. The act does not purport to offer a mere "chance of benefits to those who comply with its condition", but, on the contrary, is designed to induce action

beneficial only to the public, so that the reason given in the above case for refusing to imply a promise does not apply.

Moreover, it cannot be said in this case that the legislature has merely indicated "a course of conduct to be pursued until circumstances or its views of policy change" (191 U. S. 388). Under the law of Indiana the property of appellant corporations is irrevocably dedicated to charitable use, and cannot be withdrawn regardless of change in legislative policy. *Richards* v. *Wilson* (1916), 185 Ind. 355.

(c) *East Saginaw Salt Manufacturing Company* v. *City of East Saginaw* (1872), 13 Wall. (80 U. S.) 373, 20 L. Ed. 611, is likewise distinguishable on all grounds of decision. Here the corporate privileges, including tax exemption, have been offered only upon condition that the enterprise be incorporated for religious, educational or charitable purposes and not for private profit. Compliance with these conditions has irrevocally committed the property of appellants and their donors to uses beneficial to the public alone. There the inducement was offered without incorporation to all persons so long as they continued a purely commercial venture from which they were at liberty to withdraw at any time.

2. We believe that the Supreme Court of Indiana erred in refusing to follow:

Piqua State Bank v. *Knoop* (1853), 16 How. (57 U. S.) 369, 14 L. Ed. 977;

Home of the Friendless v. *Rouse* (1869), 8 Wall. (75 U. S.) 430, 19 L. Ed. 451;

Washington University v. *Rouse* (1869), 8 Wall. (75 U. S.) 439;

University v. *People* (1879), 99 U. S. 309, 25 L. Ed. 387;

St. Anna's Asylum v. *New Orleans* (1882), 105 U. S. 362, 26 L. Ed. 188.

VII

Cases Believed to Sustain Jurisdiction

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

University v. *People* (1879), 99 U. S. 309;
Yazoo & Mississippi Valley R. R. Co. v. *Thomas* (1889), 132 U. S. 174, 184;
Gulf & Ship Island R. R. Co. v. *Hewes* (1901), 183 U. S. 66, 68;
Carondelet Canal Co. v. *Louisiana* (1914), 233 U. S. 362, 375-378);
Clyde v. *Gilchrist* (1923), 262 U. S. 94, 97;
Millsaps College v. *Jackson* (1927), 275 U. S. 129, 132;
Municipal Investors v. *Birmingham* (1942), 316 U. S. 153, 154.

Appellants therefore pray that this court assume jurisdiction of this appeal and that the judgment and decree of the Supreme Court of Indiana be in all things reversed.

(Signed) FRANK C. DAILEY,
GEORGE E. HERSHMAN,
OTHNIEL HITCH,
PAUL Y. DAVIS,
Counsel for Appellants.

APPENDIX "I"

Opinion of Indiana Supreme Court

IN THE SUPREME COURT OF INDIANA

No. 28154

December 11, 1946 15th Judicial Day November Term 1946

GRAND LODGE HALL ASS'N, I. O. O. F. OF INDIANA, et al.,

vs.

RALPH F. MOORE, as Auditor of Marion County, Indiana, etc., et al.

Appeal from Marion Circuit

RICHMAN, J.:

Upon appellants' petition for a declaratory judgment, evidence was heard, followed by a special finding of facts, conclusions of law and judgment for appellees. The conclusions are here assigned as error. It is found that each appellant is incorporated under and pursuant to Ch. 246 of the Acts of 1921, §§ 25-1101-1109, Burns' 1933, for purposes authorized by the Act and has acquired and owns valuable property, including real estate, the net income from which is used exclusively for the authorized educational, religious or charitable purposes. Included in the real estate described in the findings are the Odd Fellow Building at Pennsylvania and Washington Streets, the English Hotel Building on Monument Circle and the Indiana Pythian Building at Pennsylvania Street and Massachusetts Avenue, all in Indianapolis. The real estate involved in the controversy is rented for secular purposes, some of the rent received being used to reduce mortgages but otherwise being applied to the corporate purposes. After its acquisition by the respective corporations, all of the real estate was taken from the tax duplicate as exempt pursuant to Section 9 of the Act of 1921. In 1937 the Act of 1921 was amended by provision that such property should continue to be exempt

until March 1, 1944, but thereafter the exemption should not apply unless the property be "occupied and used exclusively for such (corporate) purposes and objects." Acts 1937, Chapter 146, p. 814, § 25-1109 Burns' 1933 Supp. This proceeding was begun prior to that date in anticipation of action of the appellee taxing officials in assessing and levying taxes upon the real estate. It is contended by appellants that their property, though rented for secular purposes, is still within the exemption of the 1921 Act which by their respective acceptances and incorporation thereunder became contracts protectable by both state and federal constitutions against any impairment of the Act of 1937.

Authority for legislation exempting property from taxation is found in Art. 10 § 1 of the Indiana Constitution, reading:

> "The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law."

It permits without restraint the enactment of a statute exempting any or all of the six kinds of property mentioned. Not only is it so stated but it was so intended as is clearly shown by discussion of the section in the Constitutional Convention. The thought of the founders (there were a few dissenters) is summed up by Mr. Maguire who "thought it the duty of the Convention, if any section about taxation should be adopted, to recognize the principle of exemption for such purposes leaving the details to the sound discretion of the legislature." Debates of Indiana Convention, 1850, p. 1290. See pp. 1285-1291, inclusive and particularly comments by Messrs. Read, author of the section, Colfax and Kilgore. The words "by law" at the end of the section may be thought to imply that exemption may not be made by legislative contract but nothing was said in the convention to that effect. Mr. Read no doubt was thinking of the ordinary function of the General Assembly which is to make laws, not to make contracts.

It is settled, we think that an Act of the legislature may at the same time be both a law and also an obligation of the State within the protection of the contract clauses of our constitutions. This is true both of special and general acts. Of the latter class was the contract sustained in *The Piqua Branch of the State Bank of Ohio v. Knoop* (1853), 57 U. S. 369, 14 L. Ed. 977. See *Stanislaus County v. San Joaquin & K's R. C. & I. Co.* (1904), 192 U. S. 201, 48 L. Ed. 406. See also *Indiana ex rel. Anderson v. Brand* (1938), 303 U. S. 95, 82 L. Ed. 685.

The intent of the legislature to enter into a contract with an artificial body of its creation ought to be apparent from the law which is alleged to constitute the contractual obligation. When that law is a special act addressed to a particular group of incorporators to meet a sptcific need or purpose the intent to contract is more easily discerned than when the law is general, addressed to no one in particular group of incorporators to meet a specific need or ticular but available to all of a class as a vehicle for incorporation so long as it stands unrepealed. The cases we have found wherein the legislative contracts have been sustained as inviolable by the United States Supreme Court were, with the exception of the *Knoop* case, supra, in the former category. Upon several of these cases appellants rely, particularly *Northwestern University v. People* (1878), 99 U. S. 309, 25 L. Ed. 387. But even a special act applying to one charitable corporation only and providing that certain of its real estate and ground rents "so long as the same shall continue to belong to the said hospital shall be and remain free from taxes" was held not to constitute an irrevocable contract. *Christ Church v. Philadelphia County* (1861), 65 U. S. (24 How.) 300, 16 L. Ed. 602. The opinion states:

> "This concession of the legislature was spontaneous, and no service or duty, or other remunerative condition, was imposed on the corporation. It belongs to the class of laws denominated privilegia favorabilia. It attached only to such real property as belonged to the corporation, and while it remained as its property; but it is not a necessary implication from these facts

that the concession is perpetual, or was designed to continue during the corporate existence."

This was the earliest case we have found in which the Supreme Court enunciated this view. It was a new conception and therefore without direct authority. Three cases are cited in support thereof by Mr. Justice Campbell but the analogy between either of them and the case then before the court was not very close. Eleven years later the court was considering a general act of the State of Michigan the first section of which authorized the incorporation of companies to bore for and manufacture salt. The next section provided, "All property, real or personal, used for the purposes mentioned in the 1st section of this act, shall be exempt from taxation for any purpose." The court said: "Such a law is not a contract except to bestow the promised bounty upon those who earn it so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time." *East Saginaw Sale Manufacturing Co. v. City of East Saginaw* (1872), 80 U. S. 373, 20 L. Ed. 611, 2 Am. Rep. 82.

These two and other cases were before Mr. Justice Holmes when he wrote the opinion in *Wisconsin & Michigan R. Co. v. Powers* (1903) 191 U. S. 379, 48 L. Ed. 229, which dealt with a general act of the State of Michigan levying a specific tax upon railroads but providing that it should "not apply to any railway company hereafter building and operating a line of railroad within this state north of parallel forty-four of latitude until the same has been operated for the full period of ten years . . ." The learned justice first undertook to apply to the facts the elementary rules used by courts and law writers to determine the existence of a contract. He said that "the building and operating of the railroad was a sufficient detriment or change of position to constitute a consideration if the other elements were present." But he added that "the promise and the consideration must purport to be the motive, each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or that the detriment induces the promise, if the other half is wanting." He added that in the case before him "the two things are not set against

each other in terms of bargain", but he declined to put the decision on this ground alone saying:

> "The broad ground in a case like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy, and providing for carrying it out, it may open a chance for benefits to those who comply with its condition, but it does not address them, and therefore), it makes no promise to them. It simply indicates a course of conduct to be pursued until its views of policy change."

Whether the statute offers "privilegia favorabilia", or a "bounty" or a "chance for benefits", or something similar by some other name, the principle is the same. We think these cases rule the case before us, for we are not able in the Act of 1921 to find any suggestion that the legislature intended to or did promise complete and permanent exemption from taxation. Such a promise is out of harmony with the previous public policy of the state as declared by every General Assembly since 1942 that has assumed to deal with the tax exemption. We might add that this public policy, which is for the legislature to declare, was evidently approved by certain judges of this court who let their own views creep into their opinion. See Orr *v.* Baker (1853), 4 Ind. 86 (construing an 1843 statute); *City of Indianapolis v. The Grand Master, etc.* (1865), 25 Ind. 518. With the exception of property of governmental units or institutions Indiana tax exemption statutes usually if not universally have made the exemption of real property depend upon the use to which the property is put. The last general revision of the tax laws of the state was made in 1919. Ch. 59 Acts 1919. The exemption section, § 5, was amended in 1920 and this section in turn amended in 1921 by the same General Assembly that is now supposed to have promised appellants unrestricted and permanent exemption. Chapter 222 Acts 1921, pages 638-646, § 64-201 Burns' 1943 Repl. This act contained an emergency clause which made it effective March 10, 1921, the same day the Foundation and Holding Company Act was approved by the Governor. Chapter 4

of the Acts of 1921 also seeks to amend § 5 of the 1919 Act which amendment was doubtless deemed ineffective because that section had already been amended. This brief legislative history shows that four times within two years ending March 10, 1921, the legislature had exemptions under consideration without making any substantial change as to religious and charitable institutions. The exempton of religious societies provided in § 64-201 is confined to the building used for religious worship, its furniture, the parsonage "occupied as such", and "the land whereon said building or buildings are situate, not exceeding fifteen acres . . ." The predecessor of this section was held in *Orr v. Baker, supra,* not to exempt leased store buildings next door to its church on a lot of less than 15 acres owned by the Methodist Church of Evansville. A "fraternal beneficiary association" under the eleventh clause of the 1921 amendment is exempt as to its property "except real estate not occupied by such association in carrying on its business." These illustrations are sufficient to show the general policy as to tax exemption of real property held by benevolent purposes. We have insuperable difficulty in finding that this general public policy was intended to be changed or exceptions thereto created by Act of 1921 upon which appellants rely as a contract. It does not meet the test of promise set against detriment or change of position in terms of bargain. But as Mr. Justice Holmes said, "the broad ground" in that the Act makes no promise but "simply indicates a course of conduct to be pursued until its views of policy change." Reading it in *pari materia* with Ch. 222 it might reasonably be argued that the exempton in § 9 of Ch. 246 was to be limited by the use to which the real estate should be devoted. Administrative officials, however, construed it differently and removed appellants' real estate from the tax duplicate. Assuming that they were right in its construction we still are unable to see that the exemption was intended to be permanent. The argument in support of that view is that the life of corporations organized under the Act is not limited in time and therefore may be deemed to be perpetual. From this premise the argument is made that because the exemption contained in § 9 is not limited in time it therefore must also be deemed to be perpetual. Against

this view is the principle that a contract containing no specific termination date is terminable at will and the further rule that where the parties fix no time for the performance or discharge of obligations created by the contract they are assumed to have had in mind a reasonable time. It can not be doubted that an exemption created in 1921 and extended in 1937 to 1944 has existed for a reasonable time.

We are aware that in *Home of the Friendless v. Rouse* (1869), 75 U. S. 430, 19 L. Ed. 495, it was said that to add the word "forever" after the clause "all property of said corporation shall be exempt from taxation" could "not make the meaning any clearer." But against this case we set *Christ Church v. Philadelphia County, supra,* wherein Mr. Justice Campbell, after stating, as above quoted, that there was no necessary implication that freedom from taxation was to be "Perpetual, or was designed to continue during the corporate evidence", made the following statement:

> "Such an interpretation is not to be favored, as the power of taxation is necessary to the existence of the state, and must be exerted according to the varying conditions of the commonwealth. The act of 1833 belongs to a class of statutes in which the narrowest meaning is to be taken which will fairly carry out the intent of the legislature. All laws, all political institutions, are dispositions for the future, and their professed object is to afford a steady and permanent security to the interests of society. Bentham says 'that all laws may be said to be framed with a view to perpetuity; but perpetual is not synonymous to irrevocable; and the principle on which all laws ought to be, and the greater part of them have been established, is that of defeasible perpetuity—a perpetunity defeasible by an alteration of the circumstances and reasons on which the law is founded'."

In *Northwestern University v. People, supra,* the special act under which the corporation was chartered was amended with a clause reading: "That all property, of whatever kind or description, belonging to or owned by said corpora-

tion, shall be forever free from taxation for any and all purposes." This inclusive, emphatic statement leaves no room for doubt or construction as to the legislative intent. But it was addressed and made with respect to a specific corporation and, we may assume, with its needs and objectives fully in mind. We are unwilling to apply such a precedent to a general act addressed to no one in particular, the principal purpose of which obviously was to furnish a method of organization for corporate activity. The person who drafted it may have had the learning and foresight to anticipate reliance upon it sometime as a contract for perpetual exemption but we doubt if any legislator had any such conception. From beginning to end it contains no suggestion of a contractual obligation to be assumed by the state. The title is, "An Act concerning the organization of foundation or holding companies and prescribing their powers and duties," which obviously contains no warning that the legislature in its enactment intends to surrender permanently any part of the sovereign power of taxation. The only mention of taxation is in the last sentence of the last section: "Property held by such corporation exclusively for religious, educational or charitable purpose shall be exempt from taxation." The word "exclusively" suggests a limitation which appellees contend relates to use. It may be so, although the word "held" is not synonymous with "used". See *Northwestern University v. People, supra.* If it were given such a meaning the act would be consistent with general public policy as found in previous and concurrent legislation as to tax exemptions. But against this construction is the administrative interpretation, in keeping the real estate off the tax duplicate from 1921 to 1937, despite its known use for secular purposes, and the legislative interpretation manifest in the Act of 1937 which provides "that all real and tangible personal property now held by such corporations . . . but not occupied and used exclusively for such purposes and objects shall *continue* to be exempt from taxation . . . until March 1, 1944." (Our italics.) We prefer, therefore, not to put our decision on a strained construction of the language of this sentence, even though so to do would make it harmonious with the

public policy declared by previous statutes and the one in *pari materia* which amended the 1919 act.

Looking at the holding company act of 1921 as a whole, in the light of the opinions of the United States Supreme Court above quoted, and particularly the decision in *Christ Church v. Philadelphia County*, we are unable to find in it the intent to promise these corporations more than a present tax exemption, a privilege that might in the wisdom of a future Geenral Assembly be and was taken away by the Act of 1937.

Judgment affirmed.

APPENDIX "II"

INDIANA ACTS 1921, CH. 246, PP. 730-731

An Act concerning the organization of foundation or holding companies and prescribing their powers and duties. (S. 274. Approved March 10, 1921.)

Foundation or Holding Companies

Section 1. Be it enacted by the general assembly of the State of Indiana, That any number of persons not less than nine (9) may associate themselves together as a body corporate as a foundation or holding company in the manner and for the purpose hereinafter designated.

Articles of Incorporation

Section 2. The incorporators shall sign and acknowledge articles of incorporation and file a copy thereof in the office of the secretary of state for the State of Indiana, and a duplicate thereof in the office of the county recorder of the county where the general offices of the corporation are to be located. Such general office shall be in the State of Indiana, and the articles of incorporation shall designate the county in which they shall be located.

Purpose of Organization

Section 3. The articles of incorporation shall state the purposes for which the same is organized, which shall be

to promote religious, educational or charitable purposes or all of them.

May Receive Gifts and Bequests

Section 4. Such corporation may receive by gift, devise, bequest or otherwise any money or property absolutely or in trust to be used, either the principal or the income therefrom, for the furtherance of any of the above mentioned purposes as designated in the charter.

Board of Directors

Section 5. The number of members of the board of directors of such corporation shall be not less than nine (9) nor more than fifteen (15). The articles of incorporation shall designate the persons who shall constitute the first board of directors, giving the place of residence of each, the length of time each shall serve and the manner of electing their successors and filling vacancies. Provided the members of said board shall be divided in three groups as nearly equal in number as possible, one group shall serve for one year, one group for two years and one group for three years; and thereafter the term for which a member of said board shall serve shall be three (3) years, except in case of an election to fill a vacancy, which shall be for the unexpired term for which the member is elected. The number of members of the board of directors of such corporation may be increased or decreased by resolution of the board, provided, however, there shall at no time be more than fifteen (15) nor less than nine (9) members.

Members to Receive No Pecuniary Benefit

Section 6. No member of such corporation may receive any pecuniary benefit from the same, except such compensation as may be allowed for services actually rendered.

Officers

Section 7. The board of directors may fix by law the title and number of officers of such corporation and the term during which each may serve.

Seal

Section 8. The articles of such corporation shall describe the corporate seal.

Real Estate and Taxation

Section 9. Such corporation may hold and convey any real estate necessary for the transaction of its business or the execution of any trust. Property held by such corporation exclusively for religious, educational or charitable purpose shall be exempt from taxation.